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Written statement* submitted by the International Bar Association, non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[16 February 2015]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Human Rights abuses in Sri Lankan rehabilitation camps: arbitrary detention, surveillance and intimidation[1]*

Although the civil war ended in 2009, conflict-related issues continue to affect human rights protection in Sri Lanka. A key concern in this regard is the rehabilitation process aimed at "reforming" ex-LTTE cadres. In particular, the following core human rights issues have been identified: (1) arbitrary detention in rehabilitation camps is used by the Sri Lankan Government as a means to suppress the Tamil population; (2) surveillance, intimidation and harassment continue after the release of detainees; (3) the rehabilitation process further entrenches divisions within Sri Lankan society and provides a continuous source of conflict. As such, the rehabilitation process poses an obstacle to sustainable peace and reconciliation in Sri Lanka. This submission is based on over 50 interviews conducted by Sri Lankan human rights defenders during the course of 2014.[2]

The newly elected Government of Sri Lanka has the opportunity to demonstrate its commitment to human rights by realigning national legislation and policies with the requirements of international human rights law.[3]

(1) Arbitrary detention

Rehabilitation camps were first established by the Sri Lankan Government in the late stages of the civil war. The exact location and number of camps is uncertain. The official purpose of the camps is to rehabilitate former LTTE cadres and reintegrate them into society. The legal basis for the rehabilitation camps was originally found in the Emergency Regulations of 2005.[4] Once the state of emergency ended in 2011, the relevant clauses were incorporated into the Prevention of Terrorism Act.

Despite this basis in national law, internment in rehabilitation camps constitutes arbitrary detention, as prohibited by international human rights law.[5] Detention is considered arbitrary if it includes "elements of inappropriateness, injustice, lack of predictability, and due process of law, as well as elements of reasonableness, necessity, and proportionality".[6] Moreover, it is arbitrary if the treatment of detainees does not relate to its ostensible purpose.[7]

Detention in the rehabilitation camps must be considered arbitrary for the following reasons:

(a) detainees are denied due process rights. They are incarcerated without charge, trial, access to legal representation or means to challenge their detention;[8]

(b) detention length is unpredictable and varies widely. National law allows for it to be extended for up to two years without justification. In practice, detention length often extends beyond this time;[9]

(c) the rehabilitation camps raise concerns about reasonableness, necessity and proportionality. In 2010 the International Commission of Jurists stated that the rehabilitation programme might amount to 'the largest mass administrative

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[1] The Human Rights Centre Clinic at the University of Essex undertook research and analysis in preparation of this submission. The Sri Lanka Campaign for Peace and Justice assisted with the editorial process. The International Bar Association Human Rights Institute has made the submission.

[2] In order to protect the individuals involved the identity of the activists and interviewees is withheld. The Sri Lanka Campaign for Peace and Justice has conducted a review of the findings and methodology.

[3] Sri Lanka is State party to the ICCPR, CERD, CAT, CRC and CEDAW.

[4] Emergency Regulation 2005 (as amended by ER 14462/8, 2006), Regulation 22.

[5] See e.g. ICCPR, Art. 9 [1].

[6] UN Human Rights Committee (HRC), 'General Comment 35: Article 9: Liberty and security of person' [12], March 28, 2014, CCPR/C/GC/35.

[7] HRC, 'General Comment 35: Article 9: Liberty and security of person' [12], March 28, 2014, CCPR/C/GC/35 [14].

[8] Yasmin Sooka, 'An Unfinished War: Torture and Sexual Violence in Sri Lanka 2009-2014' (March 2014), 89.

[9] Yasmin Sooka, 'An Unfinished War: Torture and Sexual Violence in Sri Lanka 2009-2014' (March 2014), 89.

detention anywhere in the world.'[10] Even those with only remote links to the LTTE were forced to surrender and more recently the rehabilitation camps have been used to detain those criticizing the Government.

(d) detainee treatment does not correspond to the camps' rehabilitative purposes. Amnesty International emphasises "the Army led people to believe that if they surrendered they would be treated leniently, provided with a short course of vocational training or even released."[11] However, detainees are often interrogated in order to extract confessions and gain information on wider social and political Tamil networks. Around a quarter of interviewees experienced torture, or cruel, inhuman or degrading treatment.

Arbitrary detention in rehabilitation camps is a clear violation of international law. Despite the seriousness of the violations, a lack of accountability persists. The absence of domestic scrutiny and limited international access to the camps reinforce a culture of impunity.

(2) Continuing surveillance, intimidation and harassment

Experiences on the ground indicate that the rehabilitation process may form part of Government-led efforts to suppress Tamil society in the North and East of Sri Lanka. Victim testimonies point to widespread and commonplace occurrences of surveillance and intimidation, which continue even after their release. Ex-detainees receive a 'reintegration certificate', which is only valid for six months at a time. They are constantly tracked and must report to the police and military, where harassment continues. For example, one witness states that "the worst thing is when I have to go to the army camp-I am not sure whether I will be coming back home". Overall, around two thirds report subsequent arbitrary detention.

Additionally, all witnesses report that the police and armed forces make regular unannounced visits to their homes. The frequency, timing and nature of these visits seem to be intended to reinforce the Government's presence in daily Tamil life. The following excerpts illustrate the reality of the situation:

> "I have not counted - but sometimes I note this down in my diary - they would have come at least 50 times in that one year."

A significant proportion of witnesses state that visits regularly occur in the middle of the night. One witness explains, "sometimes they will come when my husband is not at home. Sometimes they come in the night."

This intimidation and uncertainty cause fear and anxiety among the victims and their families. Furthermore, the visits lead to friction with neighbours and disrupt ties within their communities. Victims therefore find it difficult to recover from their experiences in the rehabilitation camps. As stated by two former detainees:

> "When they come and inquire from us often it is difficult for us. They ask us to forget the past. But even when we have forgotten they come and remind us and get the information."

> "They will write down all the details as to what I am doing, where I went recently and where I am working. They will take a photograph. [...] my family members are also scared the next day [...]. Sometimes I think it would be better to take some poison."

(3) Obstacles to a just and sustainable peace

The previous sections demonstrate that the rehabilitation process not only affects the victims and their families, but also has a wider impact on Sri Lankan society.

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[10] International Commission of Jurists, 'Beyond Lawful Constraints: Sri Lanka's Mass Detention of LTTE Suspects' (September 2010), 5.

[11] Amnesty International, 'Locked Away: Sri Lanka's Security Detainees' (March 2012), 38.

First, the secrecy and brutality associated with the camps, and the subsequent harassment, foster a general climate of oppression and fear. Tamils feel that the purpose of the rehabilitation process goes beyond controlling the LTTE and instead aims at supressing wider Tamil society. This contributes to a feeling of persecution and discrimination. The constant surveillance and fear of reprisals prevent Tamils from openly speaking out. All of this restricts not only their freedom of expression, assembly and movement, but also their political participation.

Second, the camps discourage trust in the Government and result in a lack of faith in the political and legal system. Impunity has become systematic and institutionalised. The human rights violations experienced by the Tamils are neither acknowledged nor investigated. Consequently, victims are denied any means of redress. Perpetrators have not been punished and many remain in positions of power, including the armed forces and police.

Third, the Government has claimed its military defeat of the LTTE to be a comprehensive success. This feeds into the portrayal of the Sinhalese as the "protectors of Sri Lanka" and strengthens Sinhala nationalism.[12] Ethnic divisions are further entrenched, which negatively impacts social cohesion on a long-term basis and poses an obstacle to lasting peace and reconciliation.

Recommendations

Since the end of the civil war, Tamils in the North and East have experienced little positive change. With the new Government, hope arises for an improved approach towards human rights in Sri Lanka. One of the most meaningful tests for Sri Lanka's new administration will be how it deals with the Tamil population, political opponents, and the survivors of the camps.

In light of the above the Government of Sri Lanka is urged to:

- Repeal anti-terror regulations, abolish the system of administrative detention and end practices of arbitrary detention
- Guarantee due process rights, including redress, and release all individuals unlawfully deprived of their liberty;
- End impunity by effectively investigating allegations of human rights violations, identifying and punishing the perpetrators
- Cooperate with the recommendations of the forthcoming OISL report and ensure that any domestic mechanisms of accountability meet international standards.

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*The Sri Lanka Campaign for Peace and Justice, an NGO without consultative status, also shares the views expressed in this statement.

[12] Report of the Secretary General's Penal of Experts on Accountability in Sri Lanka (March 2011), 8